

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	1:07-cr-125-09 SEB-KPF
vs.)	
)	
CRUZ SAENZ,)	
)	
Defendant.)	

ORDER GRANTING MOTION TO EXTEND
TIME FOR FILING NOTICE OF APPEAL
(Docket No. 928)

Defendant, acting *pro se*, mailed his Notice of Appeal to this Court on June 1, 2011. It was, however, due fourteen days earlier (on May 18, 2011), and the Seventh Circuit Court of Appeals has questioned Defendant's appellate counsel about the timeliness of Defendant's appeal. Consequently, Defendant now moves that we retroactively grant him a thirty-day extension of time to file his Notice of Appeal (through and including June 17, 2011), which would make the document that he mailed on June 1, 2011, timely.

The Court, having considered Defendant's motion and being duly advised in the premises, surmises that it was Defendant's initial intention not to appeal the sentence imposed on April 18, 2011, and that sometime later he changed his mind, but by the time he did so, he had already been returned to prison in Oakdale, Louisiana and his then counsel, whose office was located in Indianapolis, Indiana, was not readily available to him. As a result, Defendant decided to proceed on his own. While these facts present a "close call" regarding whether a "good cause" or "excusable neglect" showing has been made for Defendant's missed filing deadline, we find that the distance

between Defendant's place of incarceration and his then counsel's office no doubt complicated Defendant's ability to confer with counsel and, thus, the Court should give him the benefit of the doubt as to "good cause" and allow him to extend the time for his Notice of Appeal to June 17, 2011.

Accordingly, Defendant's motion is GRANTED. Because we now grant Defendant through and including June 17, 2011, to file his Notice of Appeal, we find that the document he mailed on June 1, 2011, [Docket No. 915], was timely filed with this Court.

IT IS SO ORDERED.

Date: 08/30/2011



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Copies to:

Bradley A. Blackington

UNITED STATES ATTORNEY'S OFFICE

bradley.blackington@usdoj.gov, usains.ecf-

criminal@usdoj.gov, kelly.poole@usdoj.gov, jan.arnold@usdoj.gov

A. Brian Threlkeld

FEDERAL PUBLIC DEFENDER'S OFFICE

brian_threlkeld@fd.org, abt5@columbia.edu